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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/655,921	09/05/2003	Kristine A. Maniscalco	03112	8619
30114	7590	10/28/2004	EXAMINER	
MERONI + MERONI P.O. BOX 309 BARRINGTON, IL 60011			VALENTI, ANDREA M	
		ART UNIT	PAPER NUMBER	
		3643		

DATE MAILED: 10/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/655,921	MANISCALCO ET AL. <i>[Signature]</i>
	<b>Examiner</b>	<b>Art Unit</b>
	Andrea M. Valenti	3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12 August 2004.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-37 is/are pending in the application.  
 4a) Of the above claim(s) 38-70 is/are withdrawn from consideration.  
 5) Claim(s) 1-28 is/are allowed.  
 6) Claim(s) 29-32 and 36 is/are rejected.  
 7) Claim(s) 33-35 and 37 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of claims 1-37 in the reply filed on 12 August 2004 is acknowledged.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 31 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 31 recites the limitation "the inferior container surface" in line 1. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 29, 32, and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Des. 352,480 to Carlson.

Regarding Claim 29, Carlson teaches a container insert for creating a false bottom in an oversized planter container comprising a container bottom, a container rim, and a substantially uniformly sloped inner container surface, the inner container surface

extending from the container bottom to the container rim, the inner container surface having a select container periphery intermediate the container bottom and the container rim (Fig. 2); the container insert comprising: a substantially planar superior support surface, a substantially planar inferior support surface, a peripheral support ridge, a plurality of support ribs, and a plurality of matter - receiving apertures, the peripheral support ridge comprising a sloped peripheral support surface and a peripheral support rim, the peripheral support surface being intermediate the superior support surface and the peripheral support rim, the peripheral support surface having a container - engaging depth, the support ribs being integrally formed to the inferior support surface and substantially equally spaced from one another, the matter - receiving apertures being spaced intermediate the support ribs and extending from the superior support surface to the inferior support surface, the peripheral support surface being in removably wedged engagement with the select container periphery, the container insert thus forming a false bottom in the oversized planter container at the select container periphery (please see attached Fig. 7 and 8).

Regarding Claim 32, Carlson teaches the matter - receiving apertures are defined by at least one moisture drain aperture (Fig. 7).

Regarding Claim 36, Carlson teaches the container insert comprises in combination manual removal means for enabling a user to manually remove the container insert from engagement with the select container periphery (Fig. 8).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Des. 352,480 to Carlson.

Regarding Claim 30, Carlson teaches the false bottom is spatially located a substantially uniform measured distance from the container rim, but is silent on the measured distance ranging from 6 to 8 inches. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely a change in size to accommodate different plant varieties that have different root systems and does not present a patentably distinct limitation.

#### ***Allowable Subject Matter***

Claim 31 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claim 33, 34, 35, 37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 31, 33, 34, 35, and 37 depend from rejected independent claim 29. Examiner recommends that claim 29 positively recite a 'soil support platform' in the second paragraph and 'oversized planter container' in the preamble to advance

patentability of claim 29 in addition to the inclusion of the objected subject matter identified in the preceding paragraphs.

Claims 1-28 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

Cited references U.S. Patent Des. 352,480; German Patent DE 1632909; U.S. Patent No. 4,077,159; U.S. Patent No. 2,238,132; U.S. Patent Des. 382,512; U.S. Patent No. 6,615,540; U.S. Patent No. 2,253,817; U.S. Patent No. 2,055,844; U.S. Patent No. 2,484,909; U.S. Patent No. 5,315,783; U.S. Patent Pub. No. US 2003/0106262; and U.S. Patent Des. 352,479 teach 24 an insert assembly for creating a false bottom in an oversized planter container comprising a container bottom, a container rim, and a substantially uniformly sloped inner container surface, the inner container surface extending from the container bottom to the container rim, the inner container surface having a select container periphery intermediate the container bottom and the container rim, the insert assembly comprising: a soil support platform, the soil support platform comprising a substantially planar superior support surface, a substantially planar inferior support surface, a peripheral support ridge, a plurality of support ribs, and a plurality of matter - receiving apertures, the peripheral support ridge comprising a sloped peripheral support surface, the peripheral support surface being intermediate the superior support surface and the peripheral support rim, the support ribs being integrally formed to the inferior support surface and substantially equally spaced from one another, the matter -

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receiving apertures being spaced intermediate the support ribs and extending from the superior support surface to the inferior support surface.

The prior art of record all fails to show, and fails to make obvious, either alone and/or in combination at least one nestable support spacer member, each nestable support spacer member comprising a substantially planar superior spacer surface, a substantially planar inferior spacer surface, a sloped inner peripheral surface, a sloped outer peripheral surface, a horizontal spacer thickness, an upwardly extending structure support ridge, and a downwardly extending structure support ridge, the superior spacer surface being parallel with the inferior spacer surface, the inner peripheral surface being concentric within the outer peripheral surface, the upwardly extending structure support ridge being internally formed to the inner peripheral surface forming a ridge - receiving groove, the ridge - receiving groove being intermediate the upwardly extending structure support ridge and the inner peripheral surface, the peripheral support ridge being removably engaged with the ridge - receiving groove, the downwardly extending structure support ridge being internally formed to the outer peripheral surface, the outer peripheral surface being removably engaged with a select sloped surface selected from the group consisting of the inner container surface and an inner peripheral surface, the soil support platform and at least one support spacer member thus forming a substantially planar false bottom in the oversized planter container at the select sloped surface.

The prior art of record all fails to show, and fails to make obvious, either alone and/or in combination at least one support spacer member, the support spacer member

comprising a substantially planar superior spacer surface, a substantially planar inferior spacer surface, a sloped inner peripheral surface, a sloped outer peripheral surface, a horizontal spacer thickness, and a platform support ridge, the superior spacer surface being parallel with the inferior spacer surface, the inner peripheral surface being concentric within the outer peripheral surface, the platform support ridge being integrally formed to the inner peripheral surface extending medially adjacent the inferior spacer surface, the inner peripheral surface having a platform - engaging depth, the outer peripheral surface being in removably wedged engagement with the select container periphery, the peripheral support rim being in removably seated engagement with the platform support ridge, the spacer- engaging depth coinciding with the platform - engaging depth such that the superior support surface is substantially coplanar with the superior spacer surface, the soil support platform and the support spacer member thus forming a substantially planar false bottom in the oversized planter container at the select container periphery.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

German Patent DE 1632909; U.S. Patent No. 4,077,159; U.S. Patent No. 2,238,132; U.S. Patent Des. 382,512; U.S. Patent No. 6,615,540; U.S. Patent No. 2,253,817; U.S. Patent No. 2,055,844; U.S. Patent No. 2,484,909; U.S. Patent No. 5,315,783; U.S. Patent Pub. No. US 2003/0106262; U.S. Patent Des. 352,479.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Andrea M. Valenti  
Patent Examiner  
Art Unit 3643

05 October 2004

  
Peter M. Poon  
Supervisory Patent Examiner  
Technology Center 3600

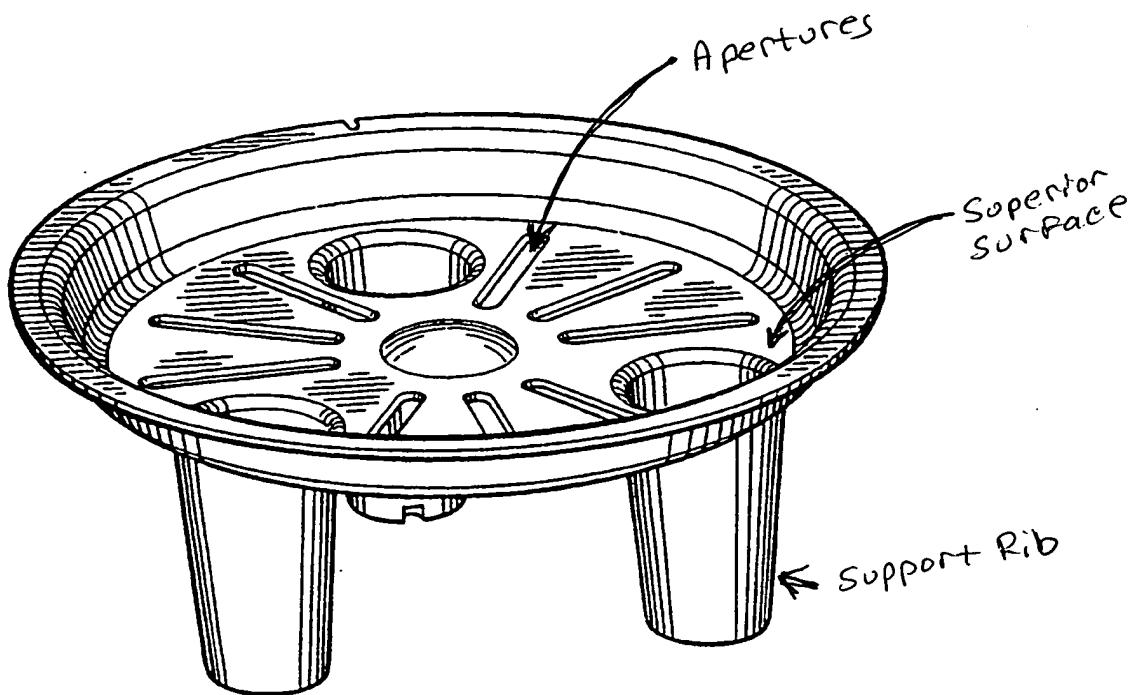


FIG. 7.

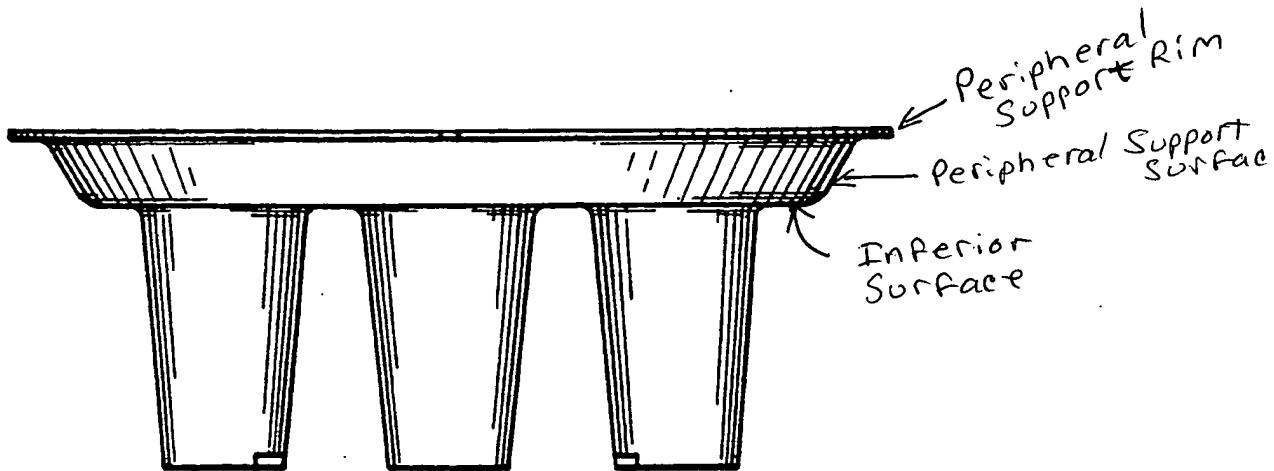


FIG. 8.